UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 2:13-CR-00037-1-JRG
	)	
DEMETRIUS ANTWAN DALTON	)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant Demetrius Antwan Dalton's Pro Se Motion for Appointment of Counsel in Light of Supreme Court Ruling in *Concepcion v. United States* [Doc. 826], the Federal Defender Services of Eastern Tennessee's Supplement to Defendant's Pro Se Motion for Reduction in Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) [Doc. 845], and the United States' Response in Opposition [Doc. 854]. For the reasons herein, the Court will deny Defendant's motion.

I. BACKGROUND

In 2013, Mr. Dalton pleaded guilty to conspiring to distribute or possess with the intent to distribute 280 grams or more of a mixture or substance containing a detectable amount of cocaine base, or crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846. [Plea Agreement, Doc. 133; Minute Entry, Doc. 168]. At sentencing, the Court applied an advisory guidelines range of 360 months to life but, departing downward, sentenced Mr. Dalton, a career offender under USSG § 4B1.1(b), to 240 months' imprisonment. [PSR, Doc. 316, ¶ 74; Hr'g Tr., Doc. 644, at 2:17–18, 61:24–25, 62:1–2; J., Doc. 571, at 2]. Acting pro se, Mr. Dalton previously moved for compassionate release under 18 U.S.C. § 3582(c)(1)(A) because of the COVID-19 pandemic, citing underlying medical conditions that included borderline diabetes, high blood pressure, and an unspecified heart problem. [Def.'s Mot. for Compassionate Release, Doc. 787,

at 1]. The Court denied his motion, partly because 18 U.S.C. § 3553(a)'s factors militated against his release. [Mem. Op. & Order, Doc. 794]. In its analysis of § 3553(a)'s factors, the Court noted that Mr. Dalton had incurred "numerous, serious disciplinary infractions during his incarceration, including "arranging for drugs to be entered" into the prison system and "possessing a hazardous tool." [*Id.* at 8]. Mr. Dalton now again moves for compassionate release, contending that the Supreme Court's decision in *Concepcion v. United States*, 142 S. Ct. 2389 (2022), the Sixth Circuit's decision in *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019), and his post-rehabilitative efforts add up to extraordinary and compelling reasons for his release. [Def.'s Renewed Mot. for Compassionate Release, Doc. 826, at 1–4].

II. LEGAL STANDARD

Section 3582(c)(1)(A), the compassionate-release statute, authorizes the Court to reduce a defendant's sentence if, "after considering the factors set forth in [18 U.S.C.] § 3553(a) to the extent that they are applicable," it "finds that . . . extraordinary and compelling reasons warrant such a reduction" and that a "reduction is consistent with the applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A); *but see United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021) (holding that district courts "need not consider" USSG § 1B1.13 when ruling on a motion for compassionate release under § 3582(c)(1)(A) because "§ 1B1.13 is not an applicable policy statement for compassionate-release motions brought directly by inmates"). "[D]istrict courts may deny compassionate-release motions when any of the . . . prerequisites listed in § 3582(c)(1)(A) is lacking and do not need to address the others." *Elias*, 984 F.3d at 519 (citations omitted).

III. ANALYSIS

In response to Mr. Dalton's renewed pro se motion for compassionate release, the Court ordered FDS to file a supplement on his behalf, [Order, Doc. 827], and FDS has now filed its supplement. In that supplement, it asserts that "the change in the law under *Havis* and its impact on career offender classification should in combination with Mr. Dalton's health condition (obesity) and his extensive rehabilitative efforts consistent with the applicable § 3553(a) factors, constitute 'extraordinary and compelling' circumstances warranting a sentence reduction." [FDS's Suppl. at 3]. In response, the United States contends that Mr. Dalton's obesity is not an extraordinary and compelling reason for compassionate release because he is fully vaccinated against COVID-19. [United States' Resp. at 4]; *see* [Vaccine Consent Form, Doc. 855, at 1–3]. The United States also argues that *Havis* cannot constitute an extraordinary and compelling reason for compassionate release because it is non-retroactive, and it also maintains that Mr. Dalton's rehabilitative efforts alone cannot constitute an extraordinary and compelling reason for his release. [United States' Resp. at 4–7].

As to FDS's initial argument—its argument that Mr. Dalton's obesity is an extraordinary and compelling reason for his release—his vaccination status vitiates this argument. *See United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021) ("[A] defendant's incarceration during the COVID-19 pandemic—when the defendant has access to the COVID-19 vaccine—does not present an 'extraordinary and compelling reason' warranting a sentence reduction."); *see also United States v. Feggan*, No. 22-5680, at 2–3 (6th Cir. Mar. 13, 2023) (PACER), ECF No. 14-1 ("We have repeatedly explained . . . that[] 'following full vaccination . . . a defendant's incarceration during the COVID-19 pandemic . . . does not present an

"extraordinary and compelling reason" warranting a sentence reduction.'" (quoting *Lemons*, 15 F.4th at 751)).

FDS's additional arguments do not fare any better. The United States is correct that neither *Havis* nor Mr. Dalton's rehabilitative efforts can constitute an extraordinary and compelling reason for release:

> [The appellant] argues that our decision in *Havis*, his risk of contracting COVID-19, and his rehabilitative efforts supply 'extraordinary and compelling' reasons to reduce his sentence. We disagree. *Havis*, a nonretroactive judicial decision announcing a new rule of criminal procedure, cannot serve as a basis for relief. Nor, with 'vaccinations [widely] available to federal prisoners,' can [the appellant's] claims about the dangers of COVID-19. That leaves rehabilitation, which cannot by itself justify a sentence reduction. Because none of [the appellant's] reasons meets the 'extraordinary and compelling' threshold for relief, the district court did not err when it denied his petition for compassionate release.

United States v. McCall, 56 F.4th 1048, 1061 (6th Cir. 2022) (citations omitted); *see United States v. Thornton*, No. 21-1418, 2023 WL 2293101, at *2 (6th Cir. Mar. 1, 2023) ("[T]his court, sitting en banc, recently resolved our 'intractable' 'intra-circuit split' and held that 'nonretroactive changes in sentencing law cannot be "extraordinary and compelling reasons" that warrant relief.'" (quoting *id.* at 1051, 1055)); *United States v. Makupson*, No. 1:14-cr-00214-1, 2023 WL 2431992, at *2 (N.D. Ohio Mar. 9, 2023) ("[D]istrict courts in this circuit cannot consider nonretroactive sentencing-law changes when deciding whether extraordinary-and-compelling reasons exist to grant early release." (citing *McCall*, 56 F. 4th at 1061)).

Although Mr. Dalton also invokes the Supreme Court's decision in *Concepcion*—a case that, he argues, "allows district courts to consider intervening changes of law or facts to reduce sentences," [Def.'s Renewed Mot. for Compassionate Release at 2]—the Sixth Circuit has held that a defendant cannot avail himself of *Concepcion* unless he first establishes an extraordinary and compelling reason justifying his compassionate release. *See McCall*, 56 F.4th at 1061–62

("*Concepcion*'s insight goes to what a court may consider *after* it finds a defendant meets the threshold requirement for a sentence modification. If that threshold is met, *Concepcion* teaches that a district court may consider any number of changes in law and fact when exercising its discretion to grant or deny the defendant's motion. Our approach to compassionate release runs a parallel course. A defendant must first satisfy the provision's threshold requirement, showing 'some [] "extraordinary and compelling" reason' justifies 'a sentencing reduction.' With that hurdle cleared, *Concepcion*'s holding comes into play." (citations omitted)). None of the reasons that Mr. Dalton presents to the Court—his obesity, *Havis*, or his rehabilitative efforts—are extraordinary and compelling reasons for his release, so *Concepcion* cannot move the dial toward compassionate release.

In sum, Mr. Dalton fails to identify an extraordinary and compelling reason for his release under § 3582(c)(1)(A). In addition, the Court's previous analysis of § 3553(a)'s factors, which the Court incorporates by reference into this opinion, also precludes relief under § 3582(c)(1)(A). Mr. Dalton's renewed motion for compassionate release [Doc. 826] and his supplemental motion [Doc. 845] are therefore **DENIED**.

So ordered.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE